IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1303 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWAN B.MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR SR BRAHMBHATT for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 226 of the Constitution of India read with Article 14 and 16 at the instance of the petitioner, who was employed as a daily wager in the Irrigation & Mechanical Sub Division No.

V/I, Viramgam Sub Division, being a Department of Roads & Buildings, of the State of Gujarat.

2. The reliefs sought in the present petition are to the effect that the petitioner is entitled to be treated as a permanent workman, and is entitled to consequential benefits, in view of his past service record as a daily wager. The petition is also being filed merely on an apprehension that he is likely to be terminated even as a daily wager from 1st March 1995.

3. In the context of this apprehension, it may be noted that the record of the petition indicates that the petition was first presented for orders of the Court on 28th February 1995 when notice was issued to respondents. However, no interim relief was granted. Thereafter, on 12th of July 1995, although the respondents were served, they were found to be absent and hence rule was issued. Even on that day, no interim relief was granted.

Thereafter, it is found that no interim relief has been granted. In the context of these facts and looking to the fact that the learned counsel for the petitioner is unable to assert that the service conditions of the petitioner have in any way been interfered with by the respondent - employer, it appears that the apprehension voiced in the body of the petition has still not materialized, even till today.

4. After rule was issued, the respondents have filed an affidavit in reply through the Executive Engineer, Irrigation & Mechanical Division, wherein three salient features required to be noted. First, the Government of Gujarat has taken a policy decision dealing with such cases of workmen engaged as daily wagers and to absorb such daily wagers who had completed a minimum period of service on the stipulated date. Although the policy decision referred to in the affidavit is not identified, the Court is informed that there is a G.R. of the State Government issued on 17th October 1988 which deals with the subject. Whether the present petitioner would qualify for appropriate relief under the said G.R. would depend upon the facts of his case, and this aspect cannot be dealt with in a petition under Article 226.

5. Another aspect which is brought to the forefront of the said affidavit in reply is to the effect that since the services of the petitioner were no longer required looking to the workload of the Department and their requirements of this category of employees, the Department calculated and in fact tendered retrenchment

compensation by a demand draft No. 709292, which was tendered to the petitioner, and which was ultimately returned by him. Again examination of these facts may perhaps lead to a controversy, which cannot be decided in a petition under Article 226.

In the context of the aforesaid situation, it is pertinent to bear in mind that in case the petitioner has been terminated as a daily wager or otherwise, the question would still arise as to whether he has in fact been paid the retrenchment compensation as asserted in the respondents' affidavit in reply. These are disputed questions of fact which cannot be investigated in a petition under Article 226 of the Constitution. I am therefore of the opinion that the petitioner has an alternative efficacious remedy by way of appropriate proceedings under the Industrial Disputes Act, which he may avail of, if the fact situation justifies the same.

6. In the premises aforesaid, there is no substance in the present petition and the same is accordingly dismissed. Rule discharged with no orders as to costs.

7. It is clarified that the rejection of the present petition by the present order will not affect any subsequent employment which the respondents may have offered to the petitioner or the employment which the petitioner may be enjoying on the date of this order, unless the same is specifically made subject to the present petition.

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